Sub:-Grant of Legal Assistance to the Government Servants Under Rules 92 and 109 of the Rules for the Conduct Legal Affairs of Government, 1984.

Government of Maharashtra
Law and judiciary Department,
Circular No.9336/Misc./E.
Mantralaya, Mumbai- 400 032, dated 20th December 2011

The Government Officers / Employees are required to perform their official duties and while due discharge of their official duties in good faith and in the public interest they took certain decisions. However, many times some persons being aggrieved by such decisions taken, by Government/Officers while discharging the official duties, challenge such decisions before the Civil and/or Criminal Courts and in such case officers/employees are made parties by their name and/or name and designation. Though there are provisions under the Rules for the Conduct of Legal Affairs of Government, 1984 (the Rules of 1984) for providing grant of legal assistance to such officers/employees, there are grievances from the officers/employees who are made parties by name or by name and designation that they are not receiving timely legal assistance, causing them inconvenience and putting them in embarrassing position. This is creating feeling of insecurity and loneliness amongst the officers/employees of the Government. This also happens in cases of officers/employees who have retired from service but have been made parties in their names and/or name and designation while acting in their official capacity in civil/criminal cases. The issue of measures to be taken for preventing recurring attacks on the Government officers/employees and providing legal assistance to the officers/employees who are made parties by name in the cases, while acting in their official capacity before the civil/criminal courts was discussed.

The provisions regarding the grant of legal assistance to the Government officers/employees who are made parties by name and/or by name and designation are contained under Rules 92 and 109 of the Rules of 1984. Rule 92 provides for procedure when Government Officer is sued by name and designation whereas Rule 109 provides for the procedure for grant of legal assistance to the officers who have to institute civil/criminal proceedings in respect of acts done in good faith, by or purported to have been done by them in discharge of their official duties or to defend such proceedings in which they have been sued by name and designation or in their personal capacity for the acts done by them in discharge of their official duties. As per the provisions of the said Rules before granting such legal assistance to the officers/employees who are made parties by name in personal capacity and/or by name and designation, the concerned Administrative Department has to form

opinion that the officers/employees who are made parties by name and/or by name and designation have acted in good faith and in due discharge of their official duties. Once the administrative department concerned is satisfied that such officers/employees have acted in good faith and in due discharge of their official duties and it is necessary to grant legal assistance to such officers/employees then it shall move the proposal to that effect to Law & Judiciary Department. On receipt of such proposal from the concerned administrative department the Law & Judiciary Department issues instructions to the concerned law officer for conducting the case on behalf of the officers/employees who are made parties by name and/or by name and designation. Sometime it takes time for completing this procedure, which result in inconvenience to the officers/employees who are made parties by name and designation. In order to avoid delay in this behalf and provide timely legal assistance to the officers who are made parties by name and/or by name and designation in connection with the matters while discharging their official duties in good faith, following steps be taken.

(a) As soon as the notice/intimation is received by the officer/employee/retired officer/employee about involving him as party by name and/or by name and designation in the civil/criminal cases he shall at once make reference to his concerned Administrative Department in Mantralaya for grant of legal assistance, clarifying the position under what circumstances he has been made party respondent by name and designation.

(b) The concerned Administrative Department in Mantralaya on receipt of such reference shall examine the proposal immediately and if it is satisfied that officers/employees/retired officers-employees are made parties in civil/criminal cases in connection with the work done/action taken by such officers/employees while discharging official duties in good faith, it shall make proposal to that effect without loss of time to the Principal Secretary & R.L.A., Law & Judiciary Department, Mantralaya, Mumbai or the Joint/Deputy Secretary, Law & Judiciary Department, branch at Nagpur or Aurangabad as the case may be, under whose purview the subject matter falls.

(c) When the Law & Judiciary Department, Mantralaya, Mumbai or the Joint Secretary, Nagpur or Aurangabad as the case may be receives the proposal from the concerned Administrative Department regarding grant of legal assistance to the officers/employees/retired officers-employees who are made parties by name and/or by name and designation, shall take immediate steps to instruct concerned Law Officer for conducting the matter before the court concerned on behalf of such officers/employees/retired officers-employees who are made party by name and/ or by name and designation.

(d) The Police officer in the Police Department who have been made party respondents by name and designation in civil/criminal proceedings in respect of acts

done by them in discharge of their official duties, for obtaining legal assistance they shall follow the procedure as prescribed in the rules 297 and 298 in section IX of Chapter VIII of the Bombay Police Manual, 1959 Vol.I.

(e) In case of extreme urgency when the time does not permit to follow the procedure laid down above, the officer concern shall approach the Administrative Department through his immediate higher officer who in turn, on satisfying itself that the case has arisen in respect of the action taken by the officer / employee in due discharge of his official duty and in good faith shall instruct the Law Officer concern for conducting the matter on behalf of such officers/employees on the particular date before the court and on such instructions from the Administrative Department, the concerned Law Officer shall appear in the case on behalf of such officers/employees. However, before the next scheduled date by the court for hearing the matter, the instructions be sought from the Law & Judiciary Department after following the procedure mentioned above.

The Secretaries of the Administrative Departments should take note of these instructions and should bring these instructions to the notice of all the officers working under their control and follow the above instructions scrupulously.

Lapses on the part of all the concerned in this behalf will be viewed seriously. The extract of rules 92 and 109 is annexed hereto.

The circular is available on the Website of Government of Maharashtra at www.maharashtra.gov.in and Computer Code of the Circular is 201112210627351235001

By order and in the name of the Governor of Maharashtra.

(Ratnakar Gaikwad)
Chief Secretary

To

All Additional Chief Secretaries/Principal Secretaries/Secretaries of the Administrative Departments in Mantralaya, Mumbai.

The Government Pleader, High Court (A.S.), Writ Cell, Mumbai.

The Government Pleader, High Court (O.S.),Mumbai.

The Government Pleader, High Court (A.S.), Mumbai.

The Government Pleader, High Court, Nagpur Bench at Nagpur.

The Government Pleader, High Court, Aurangabad Bench at Aurangabad.

The Joint Secretary to Government, Law and Judiciary Department, Nagpur.

The Joint Secretary to Government, Law and Judiciary Department, Aurangabad.

All the District Government Pleaders.

The Chief Presenting Officers, Maharashtra Administrative Tribunal, Mumbai/Nagpur/Aurangabad.

The Desk Officer/Desk-7, Law & Judiciary Department, Mantralaya, Mumbai.